



## **ARIZONA BOARD OF FINGERPRINTING**

Mail Code 185 • Post Office Box 6129 • Phoenix, Arizona 85005-6129  
Telephone (602) 322-8590 • Fax (602) 322-8594

### **Notice of Public Meeting**

February 9, 2007, at 8:30 a.m.

2222 West Encanto Blvd., Suite 350, Phoenix, Arizona

#### **Board Members**

Mike LeHew, Department of Economic Security, Chair  
Kim Pipersburgh, Department of Health Services, Vice Chair  
Rand Rosenbaum, Administrative Office of the Courts  
Charles Easaw, Department of Education  
Arthur W. Baker, Department of Juvenile Corrections

#### **Executive Director**

Dennis Seavers

Pursuant to Arizona Revised Statutes ("A.R.S.") § 38-431.02, notice is hereby given to the members of the Arizona Board of Fingerprinting ("board") and to the general public that the board will hold a meeting open to the public as specified below. The board reserves the right to change the order of the agenda.

As indicated in the following agenda, the board may vote to go into executive session, which will not be open to the public, to discuss certain matters.

Individuals who wish to acquire background material provided to board members (with the exception of material relating to possible or previous executive sessions) may request them by contacting Dennis Seavers at (602) 322-8593.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Dennis Seavers at (602) 322-8593. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED AND POSTED THIS 6th day of February 2007 at 2:00 p.m.

Arizona Board of Fingerprinting

By \_\_\_\_\_  
Dennis Seavers, Executive Director

**AGENDA**

I. CALL TO ORDER AND ROLL CALL Mr. LeHew

II. CALL TO THE PUBLIC Mr. LeHew

At this portion of the meeting, the public is invited to make comments. Arizona law prohibits board members from discussing items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to scheduling the matter for further consideration and decision at a later date.

III. MINUTES Mr. LeHew

Minutes from January 26, 2007, meeting

IV. BOARD POLICY ON POST-HEARING ACTIVITIES Mr. LeHew

At this portion of the meeting, the board will discuss possible changes to the portion of its business process that follows administrative hearings. The Board may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(3).

V. AUDIT REPORT Mr. Seavers

At this portion of the meeting, the board will discuss the draft performance-audit report by the Office of the Auditor General. The Board may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(2).

VI. EXECUTIVE DIRECTOR'S REPORT Mr. Seavers

- A. Fiscal year 2007 budget update
- B. Fiscal year 2007 strategic-plan update
- C. Legislation
- D. Relocation of Board office
- E. Progress toward resolving open cases referred to administrative hearing

VII. ADJOURNMENT Mr. LeHew

# **DRAFT**



## **ARIZONA BOARD OF FINGERPRINTING**

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Telephone (602) 322-8590 • Fax (602) 322-8594

### **Draft Minutes for Public Meeting**

Held January 26, 2007, at 8:30 a.m.

2222 West Encanto Blvd., Suite 350, Phoenix, Arizona

#### **Board Members**

Mike LeHew, Department of Economic Security, Chair  
Kim Pipersburgh, Department of Health Services, Vice Chair  
Rand Rosenbaum, Administrative Office of the Courts  
Charles Easaw, Department of Education  
Arthur W. Baker, Department of Juvenile Corrections

#### **Executive Director**

Dennis Seavers

### **CALL TO ORDER AND ROLL CALL**

Mr. LeHew called the meeting to order at 10:25 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Rand Rosenbaum, Charles Easaw, and Arthur W. Baker. No Board members were absent.

### **CALL TO THE PUBLIC**

Mr. LeHew made a call to the public. There were no members of the public present. Mr. LeHew noted that Dennis Seavers, the Board's executive director, and Christopher Munns, the Board's assistant attorney general, were present.

# **DRAFT**

## **APPROVAL OF MINUTES**

Ms. Pipersburgh made a motion to approve the regular- and executive-session minutes from the meeting on December 1, 2006; the minutes from the meeting on December 15, 2006; and the regular- and executive-session minutes from the Board's meeting on January 24, 2007. Mr. Baker seconded the motion, which passed, 5-0.

## **AUDIT REPORT**

Mr. Easaw moved that the Board go into executive session pursuant to A.R.S. §§ 38-431.03(A)(2) and -431.03(A)(3) to discuss the draft of the performance-audit report provided by the Office of the Auditor General and to consult with the Board's assistant attorney general. Ms. Pipersburgh seconded the motion, which passed, 5-0. The Board entered into executive session at 10:32 a.m.

The Board emerged from executive session at 11:04 a.m. Ms. Pipersburgh made a motion to direct the Board's executive director to include in the preliminary agency response to the performance-audit report the changes discussed in executive session. Mr. Easaw seconded the motion, which passed, 5-0.

## **ADJOURNMENT**

Ms. Pipersburgh made a motion to adjourn the meeting, and Mr. Baker seconded. The motion passed, 5-0. Mr. LeHew adjourned the meeting at 11:05 a.m.

Minutes approved on \_\_\_\_\_

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Dennis Seavers, Executive Director

# Arizona Board of Fingerprinting

## Memo

TO: Board members and alternates  
FROM: Dennis Seavers  
C: Christopher Munns  
Date: January 29, 2007  
**SUBJECT: Board decisions following administrative hearings**

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The Board's assistant attorney general ("AAG") has recently advised the Board to make changes to how it handles good cause exceptions following an administrative hearing. This memorandum proposes a process for the Board to follow; some of the steps are already being followed, but I describe them here for the sake of clarity. The Board may want to adopt this or a similar process at its next business meeting.

### **I. EXPEDITED REVIEW**

An expedited review is a review of the application package that an applicant submits without him or her being present.<sup>1</sup> The Board may either (1) grant a good cause exception under an expedited review or (2) refer the applicant to an administrative hearing.<sup>2</sup> When deciding whether to grant a good cause exception under an expedited review, the Board must consider whether the applicant has shown to the Board's satisfaction that he or she is not a recidivist, is successfully rehabilitated, and has not been convicted of any offense listed in A.R.S. § 41-1758.03(B) (sometimes called the list of nonappealable offenses). The Board also must consider the criteria listed in A.R.S. § 41-619.55(E).<sup>3</sup> For your reference, these criteria appear below.

1. The extent of the person's criminal record;
2. The length of time that has elapsed since the offense was committed;
3. The nature of the offense;
4. Any applicable mitigating circumstances;
5. The degree to which the person participated in the offense;
6. The extent of the person's rehabilitation, including:
  - a. Completion of probation, parole, or community supervision;
  - b. Whether the person paid restitution or other compensation for the offense;
  - c. Evidence of positive action to change criminal behavior, such as completion of a drug-treatment program or counseling;
  - d. Personal references attesting to the person's rehabilitation.

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<sup>1</sup> A.R.S. § 41-619.51(3).

<sup>2</sup> A.R.S. § 41-619.55(B).

<sup>3</sup> A.R.S. § 41-619.55(C).

## II. HEARING

When the Board determines that an applicant must appear at an administrative hearing, the executive director schedules the hearing and gives the applicant proper notice. Notice must be given at least 20 days in advance of the hearing.<sup>4</sup> The hearing is conducted by a hearing officer—either the Board’s full-time hearing officer or, if necessary, another hearing officer, such as the executive director or an administrative law judge from the Office of Administrative Hearings.<sup>5</sup> This hearing must be recorded manually or by recording device.<sup>6</sup>

After the hearing officer conducts the hearing, he or she recommends findings of fact, conclusions of law, and a decision. Within 30 days, if possible, the Board will review and make a decision on this recommendation. The date that the Board reviews the recommendation will depend on the Board’s meeting schedule.

When the hearing officer’s recommendation is ready, the executive director gives the applicant notice that the Board will be reviewing the recommendation. Notice must be given at least 20 days in advance of the Board’s scheduled meeting.<sup>7</sup> The notice includes a copy of the hearing officer’s recommendation. Although the applicant was required to appear at the hearing, he or she will not be required to appear at the Board’s review.

The executive director sends the recommendation to the Board members at the same time that he or she sends the notice.

## III. BOARD REVIEW AND DECISION

The Board meets on regularly scheduled dates (currently every other Friday) to consider recommendations from the hearing officer. The applicant may appear at the review. The Board may decide to hear arguments from the applicant, limited to a specific period of time (e.g., five minutes); or the Board may decide not to hear arguments. However, the applicant’s notice should indicate whether the Board will accept testimony or additional documentation, and, if allowed, how much time will be allotted for arguments.<sup>8</sup> Therefore, the Board should adopt a policy on accepting testimony and other evidence at its review.

The Board should consider only the administrative record in the case. This record must include the following.

1. All pleadings, motions, and interlocutory rulings;
2. Evidence received or considered;
3. A statement of matters officially noticed;
4. Objections, offers of proof, and rulings on the objections and offers;
5. Proposed findings and exceptions;

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<sup>4</sup> A.R.S. § 41-1061(A).

<sup>5</sup> A.R.S. § 41-619.55(B).

<sup>6</sup> A.R.S. § 41-1061(F). See also *Walker v. De Concini*, 86 Ariz. 151-53, 341 P.2d 939-40.

<sup>7</sup> A.R.S. § 41-1061(A). The Board determination is considered an extension of the administrative hearing, according to the AAG.

<sup>8</sup> A.R.S. § 41-1061(B)(1).

6. Any decision, opinion, or report by the hearing officer;
7. All staff memorandums, other than privileged communications, or data submitted to the hearing officer related to the case.<sup>9</sup>

To the degree appropriate and possible, the Board should conduct its deliberations openly, while preserving the confidentiality required for good-cause-exception determinations.<sup>10</sup> If the applicant appears for the review, he or she should be allowed to be present while the Board deliberates on the applicant's case. Whether or not the applicant appears, a recording of the Board's deliberations should be made.<sup>11</sup>

The Board may accept, reject, or modify the hearing officer's recommendation. The Board should make separate motions for each of the three major sections of the recommendation: the findings of fact, the conclusions of law, and the decision. Below is an explanation of the options the Board has, depending on whether it agrees with the recommendation and whether there is consensus among the Board members.

### **Accept the recommendation**

If the Board agrees with the entire recommendation, it should make three motions: (1) to accept the recommended findings of fact, (2) to accept the recommended conclusions of law, and (3) to accept the recommended conclusions of law. A majority of the quorum is required to pass the motions to accept the findings of fact and conclusions of law. If the Board accepts a recommendation to approve a good cause exception, the decision must be unanimous; but only a majority of the quorum is required to accept a recommendation to deny a good cause exception.<sup>12</sup>

A sample motion to accept the recommendation appears in Attachment A.

### **Modify or reject the recommendation**

If the Board disagrees with the recommendation, in whole or part, it should still make three motions—one each for the findings of fact, conclusions of law, and decision. Motions to modify or reject the findings of fact or conclusions of law should describe the specific changes to the findings. Additionally, the motion should explain the basis for the modification or rejection; it is not enough just to describe the changes to be made. Modifications to the findings of fact must contain specific references to the administrative record that support the change. The motions should be made with enough detail to allow the executive director to prepare an order that accurately reflects the Board's wishes. When the Board modifies or rejects the recommended findings of fact, it must review the entire administrative record, including the recorded hearing.<sup>13</sup>

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<sup>9</sup> A.R.S. § 41-1061(E).

<sup>10</sup> The requirement for confidentiality appears in A.R.S. § 41-619.54.

<sup>11</sup> A.R.S. § 41-1061(F).

<sup>12</sup> A.R.S. § 41-619.53(B).

<sup>13</sup> *Stoffel v. Department of Economic Security*, 162 Ariz. 449, 451, 784 P.2d 275, 277.

Motions to modify or reject the recommended findings of fact or conclusions of law require a majority of the quorum to pass. A unanimous vote is required to reject a recommended decision to deny a good cause exception and instead grant the good cause exception.<sup>14</sup> But only a majority of the quorum is necessary to reject a recommended decision to grant a good cause exception.

Sample motions to modify or reject the recommendation appear in Attachment B.

#### **IV. REHEARING OR REVIEW OF APPLICATIONS THAT THE BOARD DENIED**

When the Board members grant or deny a good cause exception application, the Board staff notifies the applicant of the decision by first-class and certified mail.<sup>15</sup> If the applicant disagrees with the Board's decision, he or she has 30 days from the date that the decision is served to submit a written request for review or rehearing.<sup>16</sup> This request must specify the grounds for rehearing or review and provide reasonable evidence that the applicant's rights were materially affected.<sup>17</sup>

Upon receiving a request for review or rehearing, the Board's executive director determines an appropriate date for the Board to review the request. (This determination would be based on the Board's schedule of meetings.) The executive director gives the applicant notice at least 20 days before the meeting.<sup>18</sup> The applicant may appear at the Board meeting and may present arguments in favor of the request. The Board may limit the amount of time for argument and should indicate the allotted time in the notice. The Board should consider adopting a policy that sets the time for arguments. The executive director gives the Board members a copy the applicant's request; the hearing officer's recommended findings of fact, conclusions of law, and decision; and the Board's order. The executive director indicates to the Board members whether the applicant's request was timely. If the executive director determines that the request is not timely, he should explain the basis for this determination; in addition, he should indicate in the applicant's notice that he is informing the Board that the request was not timely.<sup>19</sup>

To the degree appropriate and possible, the Board should conduct its deliberations openly, while preserving the confidentiality required for good-cause-exception determinations. If the applicant appears for the review, he or she should be allowed to be present while the Board deliberates on the applicant's case. Whether or not the applicant appears, a recording of the Board's deliberations should be made.<sup>20</sup>

The Board must grant a rehearing or review for any of the following reasons that materially affect the applicant's rights.

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<sup>14</sup> A.R.S. § 41-619.53(B).

<sup>15</sup> A.A.C. R13-11-111(A).

<sup>16</sup> A.A.C. R13-11-110(A).

<sup>17</sup> A.A.C. R13-11-110(B).

<sup>18</sup> A.R.S. § 41-1061(A).

<sup>19</sup> A.R.S. § 41-1061(G).

<sup>20</sup> A.R.S. § 41-1061(F).



1. The findings of fact, conclusion of law, or decision are not supported by the evidence or are contrary to law;
2. The applicant was deprived of a fair hearing due to an irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
3. Newly discovered evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been produced earlier;
4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.<sup>21</sup>

If the Board grants a rehearing or review, the rehearing or review must only address the issue on which the Board's original decision was found to be erroneous.<sup>22</sup> The Board may, on its own or by using a hearing officer, take additional testimony. The Board may also may amend or make new findings of fact or conclusions of law. Finally, the Board may affirm, modify, or reverse its original decision.<sup>23</sup>

The Board's order in response to the request for rehearing or review must specify the basis for the order.<sup>24</sup> The Board should make a motion with enough detail to allow the executive director to prepare an order that accurately reflects the Board's wishes.

Sample motions responding to a request for rehearing or review appear in Attachment C.

## **V. SUBSEQUENT EVENTS**

If the Board affirms a denial or rejects the applicant's request for rehearing or review, the applicant may file for judicial review in superior court within 35 days from the service date of the Board's decision.<sup>25</sup> The Board's involvement in these judicial reviews typically would be limited to responding to court orders or considering settlements. The Board's actions in the judicial reviews would be guided by the advice of the AAG.

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<sup>21</sup> A.A.C. R13-11-110(A).

<sup>22</sup> A.A.C. R13-11-110(D).

<sup>23</sup> A.A.C. R13-11-110(C).

<sup>24</sup> A.A.C. R13-11-110(D).

<sup>25</sup> A.R.S. § 12-904(A).

**ATTACHMENT A**  
**Sample Motion to Adopt Hearing Officer's Recommendation**

*After deliberation is complete, the chairperson would begin by calling for a motion.*

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been granted (or denied).

## ATTACHMENT B

### Sample Motions to Reject or Modify Hearing Officer's Recommendation

*After deliberation is complete, the chairperson would begin by calling for a motion.*

#### **Motion that amends the hearing officer's recommended findings of fact but adopts the recommended conclusions of law and decision**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact, except that the Board amend the findings of fact in the following way. [The Board member should then make clear how the findings of fact are being amended and should propose the specific language that will be amended.] The reason (or reasons) for amending the findings of fact is (or are) . . . . [The Board member should then state the grounds for the amendment.] For the record, the Board has reviewed the entire administrative record.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Sample motions to reject or modify hearing officer's recommendation

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been granted (or denied).

**Motion that modifies the hearing officer's recommended conclusions of law but adopts the recommended findings of fact and decision**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law, except that the Board modify the conclusions of law in the following way. [The Board member should then make clear how the conclusions of law are being modified and should propose the specific language to make the modification.] The reason (or reasons) for modifying the conclusions of law is (or are) . . . . [The Board member should state the grounds for the modification.]

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Sample motions to reject or modify hearing officer's recommendation

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been granted (or denied).

**Motion that adopts the hearing officer's recommended findings of fact but modifies the conclusions of law and rejects the recommended decision.**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law, except that the Board modify the conclusions of law in the following way. [The Board member should then make clear how the conclusions of law are being modified and should propose the specific language to make the modification.] The reason (or reasons) for modifying the conclusions of law is (or are) . . . . [The Board member should then state the grounds for the modification.]

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board reject the hearing officer's recommended decision and instead deny (or grant) the application for a good cause exception. The reason (or reasons) for the rejection is (or are) . . . . [The Board member should then state the grounds for the rejection.]

Chairperson: A motion has been made. Is there a second?

Sample motions to reject or modify hearing officer's recommendation

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The application for a good cause exception has been denied (or granted).



**Motion that adopts the hearing officer's recommended findings and conclusions of law but rejects the recommended decision.**

*This situation would arise when a minority of the quorum does not want to grant the applicant a good cause exception.*

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board adopt the hearing officer's recommended findings of fact.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended conclusions of law.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board adopt the hearing officer's recommended decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The vote is four in favor, one opposed. [The correct vote should be reported.] A unanimous

Memo, January 29, 2007

Attachment B

Sample motions to reject or modify hearing officer's recommendation

vote is required to grant a good cause exception. As a matter of law, the good cause exception has been denied.

## ATTACHMENT C

### Sample Motions Responding to a Request for Rehearing or Review

*After deliberation is complete, the chairperson would begin by calling for a motion.*

#### **Motion that rejects the request for rehearing or review because the request was not timely**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact. The date of service of the Board's decision was [date]. The date the applicant submitted the request for rehearing or review was [date]. The difference between these two dates was [number of days].

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under Arizona Administrative Code ("A.A.C.") R13-11-110(A), a request for rehearing or review must be submitted in writing within 30 days from the date of service of the Board's decision.
2. The applicant's request did not comply with the 30-day requirement of A.A.C. R13-11-110(A).
3. Based on the above factors, the Board has grounds to reject the applicant's request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Sample motions responding to a request for rehearing or review

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board reject the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing or review has been rejected.

**Motion that rejects the request for rehearing or review because the request does not meet the requirements of A.A.C. R13-11-110**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A). This request did not specify the grounds for the rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under A.A.C. R13-11-110(B), the applicant's request must specify the grounds for the rehearing or review and must provide reasonable evidence that the applicant's rights were materially affected.
2. Based on the above factor, the Board has grounds to reject the applicant's request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Sample motions responding to a request for rehearing or review

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board reject the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing or review has been rejected.

**Motion that denies the request for rehearing or review based on the merits of the request**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception in part because the applicant failed to submit documentary proof that he completed the sentence from his April 2, 2004, offense.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review includes documentation that shows he completed the sentence for his 2004 offense. The applicant claimed that this new evidence could have had a bearing on the Board's decision. However, the applicant did not submit this documentation prior to the Board's decision to deny his (or her) good cause exception.
4. The applicant could have produced the documentation showing he completed his sentence before the Board made its decision if the applicant had exercised reasonable diligence.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All

Sample motions responding to a request for rehearing or review

opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

- Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.
1. Under A.A.C. R13-11-110(C), the Board may grant a request for rehearing or review if the applicant shows that his (or her) rights were materially affected and provides newly discovered evidence that could have a bearing on the Board’s decision and that, with reasonable diligence, could not have been discovered or produced earlier.
  2. The evidence that the applicant submitted does not meet the requirements of A.A.C. R13-11-110(A)(3).
  3. Based on the above factors, the Board has grounds to deny the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board deny the applicant’s request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote.  
[The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or



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“Nay.”] The motion passes. The request for rehearing or review has been denied.

**Motion that grants the request for rehearing**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception because the applicant failed to appear for her September 22, 2006, administrative hearing.
2. Following the Board's denial, the applicant submitted a timely request for rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review credibly explains that she had a medical emergency on September 21, 2006. In addition, the applicant provided documentation that she was admitted to the hospital on September 22.
4. The applicant had good cause for failing to appear at her scheduled hearing.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

Sample motions responding to a request for rehearing or review

1. An applicant demonstrates good cause for failing to appear at a hearing when she demonstrates that, using reasonable diligence, she could not have been present at the hearing or requested that the hearing be rescheduled under A.A.C. R13-11-106(D). A.A.C. R13-11-108(B).
2. Based on the above factor, the Board has grounds to schedule a new hearing for the applicant.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board grant the applicant’s request for a rehearing.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing has been granted.

**Motion that grants the request for review but affirms the original decision**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception in part because the applicant failed to submit documentary proof that he completed the sentence from his April 2, 2004, offense.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review explains that one of the documents he provided demonstrated that he completed the sentence for the April 2, 2004, offense.
4. The Board finds that the applicant completed his sentence for the April 2, 2004, offense and submitted documentation that he completed the sentence with his application package.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

Sample motions responding to a request for rehearing or review

1. Under A.A.C. R13-11-110(C), the Board may grant a request for rehearing or review if the applicant shows that his (or her) rights were materially affected and that the Board's findings of fact are not supported by the evidence in the administrative record.
2. There are no disputed findings of fact that would warrant a rehearing.
3. Despite the Board's erroneous determination that the applicant did not provide evidence that he completed the sentence from his April 2, 2004, offense, sufficient grounds existed for the Board to deny applicant a good cause exception.
4. Based on the above factors, the Board has grounds to deny the applicant's request for rehearing or review.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All opposed? [The Board members opposed respond by saying "No" or "Nay."] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board grant the applicant's request for review but that the Board uphold its original good-cause-exception determination.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board's executive director or another staff member will call the roll. The Board members in favor respond by saying "Yes" or "Aye." The Board members opposed respond by saying "No" or "Nay."] The motion passes. The request for rehearing or review

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Sample motions responding to a request for rehearing or review

has been granted, but the Board has upheld its original good-cause-exception determination.

**Motion that grants the request for review and reverses the original decision**

Chairperson: Is there a motion?

Board member 1: Mr. Chairman (or Madame Chairperson), in the matter of John M. Doe, case number 1234567, I move that the Board make the following findings of fact.

1. The Board denied the applicant's good cause exception on October 1, 2006. As indicated in the Board's order, the Board denied applicant's good cause exception in part because the applicant failed to submit documentary proof that he completed the sentence from his April 2, 2004, offense.
2. Following the Board's denial, the applicant submitted a timely request for review or rehearing under Arizona Administrative Code ("A.A.C.") R13-11-110(A).
3. The applicant's request for rehearing or review explains that one of the documents he provided demonstrated that he completed the sentence for the April 2, 2004, offense.
4. The Board finds that the applicant completed his sentence for the April 2, 2004, offense and submitted documentation that he completed the sentence with his application package.
5. There are no disputed facts.
6. Had it not been for the Board's erroneous determination that the applicant did not provide evidence that he completed the sentence from his April 2, 2004, offense, the Board would have granted a good cause exception.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying "Yes" or "Aye."] All

Sample motions responding to a request for rehearing or review

opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board make the following conclusions of law.

1. Under A.A.C. R13-11-110(C), the Board may grant a request for rehearing or review if the applicant shows that his (or her) rights were materially affected and that the Board’s findings of fact are not supported by the evidence in the administrative record.
2. A rehearing is warranted only if there are disputed facts.
3. Based on the above factors, the Board has grounds to grant the applicant’s request for review and reverse the original decision.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. All in favor? [The Board members in favor respond by saying “Yes” or “Aye.”] All opposed? [The Board members opposed respond by saying “No” or “Nay.”] The motion passes.

Board member 1: Mr. Chairman (or Madame Chairperson), I move that the Board grant the applicant’s request for review, reverse the original decision, and grant a good cause exception.

Chairperson: A motion has been made. Is there a second?

Board member 2: I second.

Chairperson: The motion has been seconded. Please call the roll for a vote. [The Board’s executive director or another staff member will call the roll. The Board members in favor respond by saying “Yes” or “Aye.” The Board members opposed respond by saying “No” or “Nay.”] The motion passes. The request for rehearing or review



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has been granted, and the applicant has been granted a good cause exception.

# Arizona Board of Fingerprinting

## Memo

TO: Board members  
FROM: Dennis Seavers  
C:  
Date: February 6, 2007  
SUBJECT: Legislative update



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On February 9, 2007, the Board will hold a public meeting, and one of the agenda items is an update on legislation. This memo summarizes the progress of important legislation affecting the Board, particularly Senate Bill 1045.

### **SENATE BILL 1045**

At various meetings in 2006, the Board adopted a legislative proposal that primarily expanded the list of precluding offenses. This legislative proposal appears in Senate Bill ("SB") 1045. I secured sponsorship of the bill from Linda Gray, a Republican senator who chairs the Senate Committee on Public Safety and Health Services ("PSHS").

To date, there has been no opposition to the bill, which cleared PSHS by unanimous vote. There has been public support for the legislation, which has moved through the Senate exceptionally quickly.

The only changes to the originally introduced bill have been the following.

- **Gray amendment, PSHS.** As the Board had requested at its December 15, 2006, meeting, I asked Senator Gray to amend the set of offenses currently listed as "An offense involving organized crime and fraud under title 13, chapter 23" to "An offense under title 13, chapter 23." In addition, at the initiative of a research analyst, the amendment made a technical change to simplify the list of precluding offenses. Specifically, the amendment eliminated the listed offense of sexual abuse of a minor. This offense would be included under the newly added and broader offense of sexual abuse. A research analyst had attempted to remove the offense listing of sexual abuse of a vulnerable adult under the mistaken belief that sexual abuse also would encompass this offense. However, Mike Timmerman at DPS and I prevented this change, pointing out that sexual abuse of a vulnerable adult is not included under sexual abuse and that the proposed change would make sexual abuse of a vulnerable adult a permissible offense.

- **Gorman floor amendment.** Senator Pamela Gorman introduced an amendment on the Senate floor in the Committee of the Whole. This amendment added references to specific statutes in the criminal code for some of the newly added offenses. For instance, “Furnishing harmful items to minors” was amended to read, “Furnishing harmful items to minors as prescribed in section 13–3506.” It is unclear why Senator Gorman felt that this amendment was necessary, though I would guess that the purpose was to prevent certain activities from being included under these listings. In particular, Senator Gorman may have wanted to make sure that “Furnishing harmful items to minors” did not include cover activities like selling alcohol or cigarettes to minors, even though the definition of “harmful items” excludes cigarettes and alcohol. I have confirmed with DPS that this amendment would have no operational impact.

As of February 1, the bill had been approved unanimously by the Senate and was transmitted to the House.

### **SENATE BILL 1316**

SB1316 would add administrators of nursing care institutions and managers of assisted living facilities to the fingerprint clearance card system. The Board indicated its support for this legislation at a previous meeting. Many of these individuals already have fingerprint clearance cards, so there likely would be only a minor impact on the Board’s caseload.

As of February 6, the bill had cleared the standing committees. It will need to clear the Senate floor before being transmitted to the House.

### **SENATE BILL 1605**

SB 1605 appeared to be intended to require DHS to regulate certain individuals who provide caregiving services to people who require at-home medical care. These individuals are not certified nursing assistants or nurses, and they do not fall under the home health agency provisions of A.R.S. § 36–411. These individuals may provide various services, such as housekeeping and personal care. However, as written, the bill would include a variety of activities that probably should not be regulated, including housekeeping services such as Merry Maids.

Assuming that the bill is amended to focus on the proper group of service providers, the bill may have consequences that the Board should consider. (The bill has possibly negative consequences for other agencies, including DHS, but I do not discuss those consequences here.) Specifically, the bill would require this new group of service providers to get a fingerprint clearance card, and the Board’s caseload may increase substantially. There may be about 400 companies that have caregivers as employees who would need to get a fingerprint clearance card. If those companies had 10 employees each, then the Board may see an increase of about 200 good-cause-exception applications. It is likely that the number of people who would require fingerprint clearance cards would be substantially higher.

Although it is not clear how large an increase there would be to the Board's caseload, I estimate that the Board's current staff will not be able to keep up with the caseload increase. If this bill were to pass, the Board might need to hire at least one full-time employee. Although the increase in fingerprint-clearance-card applications would also increase the Board's income, the Board may want to take a position on this bill.